

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHRISTOPHER DIXON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 17-1679
	)	Judge Nora Barry Fischer
ALLEGHENY INTERMEDIATE UNIT 3 and	)	Chief Magistrate Judge Maureen P.
MISSIONONE EDUCATIONAL STAFFING	)	Kelly
SERVICES,	)	
	)	
Defendants.	)	

**ORDER OF COURT**

AND NOW, this day of 5<sup>th</sup> day of July, 2018, after Plaintiff filed the above-captioned employment discrimination case against Defendants, (Docket No. [1]), Defendant Allegheny Intermediate Unit 3 filed an Answer to his Complaint, (Docket No. [10]), and Defendant Missionone Educational Staffing Services filed a “Motion to Dismiss in the Form of Motion for Summary Judgment,” (Docket No. [11]), Brief in Support, (Docket No. [12]), and Concise Statement of Material Facts, (Docket No. [13]), to which Plaintiff filed a Brief in Opposition, (Docket No. [16]), and Concise Statement of Material Facts, (Docket No. [17]), and Defendant Missionone filed a Reply to Plaintiff’s Counterstatement of Additional Material Facts, (Docket No. [18]), and Reply Brief, (Docket No. [19]), and after a Report and Recommendation was filed by Chief United States Magistrate Judge Kelly recommending that Defendant Missionone’s Motion be denied, (Docket No. [20]), and granting the parties until June 7, 2018, to file written objections thereto, and upon consideration of the objections filed by Defendant Missionone [21] and Plaintiff having elected to not file a response by June 21, 2018, as was

permitted, and upon independent review of the record, and upon consideration of the Chief Magistrate Judge Kelly's Report and Recommendation, (Docket No. [20]), which is adopted as the opinion of this Court,

IT IS HEREBY ORDERED that Defendant Missionone's Objections [21] are OVERRULED as the Court's disagrees with the assertion that Chief Magistrate Judge Kelly applied an incorrect legal standard in resolving Defendant Missionone's Motion. Rather, Chief Magistrate Judge Kelly did not apply the summary judgment standard under Rule 56 in denying Defendant Missionone's Motion but merely considered the materials outside the pleadings, (including affidavits, an employment application and other documents), for the purpose of evaluating whether Defendant Missionone's alternative motion seeking summary judgment was prematurely filed. (Docket No. 20 at 6-7). Having carefully considered such objections in light of the record, this Court agrees with the recommended disposition as Chief Magistrate Judge Kelly rightly concluded that the entry of summary judgment on such a limited record was inappropriate as the parties have yet to conduct discovery on Plaintiff's claims and the defenses raised here. *See e.g., Samuel, Son & Co., Inc. v. Beach*, Civ. A. No. 1:13-128, 2013 WL 4855325, at \*5 (W.D. Pa. Sept. 11, 2013) (quotation omitted) ("It is well settled that the summary judgment process presupposes the existence of an adequate record."); *Haynos v. Siemens Water Tech. Corp.*, Civ. A. No. 12-173, 2012 WL 5834374, at \*2 (W.D. Pa. Nov. 16, 2012) (declining to convert Rule 12(b)(6) motion to summary judgment because such motion was, among other things, "premature as it is filed before discovery has commenced."); *Zampogna v. Sheriff of Westmoreland County, Pa.*, Civ. A. No. 13-233, 2013 WL 1909146, at \*2 (W.D. Pa. May 8, 2013) ("courts have recognized that the dispute as to whether the County and Sheriff are

joint employers is fact intensive and requires discovery prior to resolution by the Court.”).

ACCORDINGLY, IT IS FURTHER ORDERED that Defendant Missionone’s Motion to Dismiss in the Form of a Motion for Summary Judgment [11] is DENIED, without prejudice, to renewing such arguments at the conclusion of discovery in this case and in accordance with any deadlines established by Chief Magistrate Judge Kelly.

*s/Nora Barry Fischer*  
Nora Barry Fischer  
United States District Judge

cc/ecf: All counsel of record.

Chief Magistrate Judge Maureen P. Kelly